

DIVISIONS IV & I

CA 05-976

October 4, 2006

JAMES VINCENT VALETUTTI

APPELLANT

APPEAL FROM THE OUACHITA COUNTY  
CIRCUIT COURT  
[NO. E98-52-4]

V.

HON. MICHAEL R. LANDERS,  
JUDGE

KATHLEEN SUSAN VALETUTTI

APPELLEE

DISSENTING OPINION ON THE DENIAL  
OF REHEARING

TERRY CRABTREE, Judge

I would grant the Petition for Rehearing, and then terminate alimony as requested by the appellant. It is conceded that the appellant continues to have the ability to pay alimony, but in my opinion, the appellee no longer has the need for the alimony. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988).

The parties to this appeal were married in 1988 and divorced in 1998, a ten-year marriage and the fourth marriage of the appellee. The appellant appealed from the divorce decree entered in this case asserting, among other things, that the trial court erred in awarding the appellee permanent alimony. The divorce decree provides "In addition to the \$650.00 per month, Plaintiff is awarded \$1500.00 per month permanent alimony. Alimony shall continue until the death of the payee, payor, the remarriage of the payee, other statutory limitations or further orders of this court." Obviously, the trial court considered the alimony awarded as being permanent, even though it may be modified at any time upon showing of changed circumstances and the equities of the parties. *Herman v.*

*Herman*, 335 Ark. 36, 977 S.W.2d 209 (1998). This court affirmed the trial court's award of alimony in the amount of \$1500.00 per month.

On December 9, 2004, the appellant filed a petition to modify or terminate alimony. The trial court, finding changed circumstances, reduced appellant's alimony from \$1500.00 per month to \$950.00 per month, and increased his child support from \$200.00 per month to \$274.00 per month. The appellant appeals that decision to this court. This court affirmed the decision modifying alimony in *Valetutti v. Valetutti*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Apr. 19, 2006). The appellant has filed a petition for rehearing which is before this court at this time. I would grant the petition.

The divorce decree awarded the appellee \$200.00 per month child support; \$1500.00 in alimony; all the furniture in her possession; one half the equity of a home in Maryland of which she was required to pay the first mortgage of \$1,177.00, while the appellant was required to pay the second mortgage in the amount of \$650.00 per month. The appellee was allowed to live in the house until it was sold. Further, the appellee was awarded one-half of the appellant's retirement account with Thiokol Corporation, approximately \$51,000.00, and she received her entire retirement fund. She was awarded \$2,500.00 representing one-half of a gift given to appellant's son. The appellee was awarded her costs in moving back to Maryland in the amount of \$4,199.69, which had been paid out of the parties' tax refund. The balance of the tax refund was awarded to the appellee in the amount of \$2,167.31. The appellant was required to pay the debt on the parties' credit cards, and any debt owed for medical expenses that remained outstanding. Further, the appellant was to pay all costs of transportation to visit with his daughter, pay for health insurance for the minor child of the parties, and pay for a life insurance policy for \$150,000.00 on himself for appellee's benefit.

At the time of the divorce the appellee was earning less than \$20,000.00 annually. At the

time of the hearing on the petition to modify or terminate alimony, she was earning approximately \$34,000.00 a year, and her two sons from a prior marriage no longer lived with her. The trial court stated, in its order resulting from the petition to modify or terminate, that the appellee “has purchased a comfortable home in Elkton, Maryland, and it would appear that her financial situation has improved considerably since the date of the divorce.” The appellee managed to put at least \$1,100.00 per year into a 401k account from the year following the divorce until the hearing.

In my opinion, the appellee’s need for additional alimony has ended. After the divorce, the appellant moved back to Maryland basically debt free and with a substantial amount of money. She went to school and took accounting classes, and as a result, has obtained a higher salary. She could increase her salary again by going back to school for another two years. She certainly is not destitute, but enjoys a comfortable lifestyle. I would terminate the alimony now, or no later than 2010, which would give the appellee sufficient time to obtain the necessary education to increase her salary once again.

I would grant the petition for rehearing.

BIRD, J., agrees.